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Paper No. 6

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OFFICE OF PETITIONS

In re Application of
Squires et al.
Application No. 09/681,881
Filed: June 20, 2001
Attorney Docket No. 45722.2

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition, filed October 2, 2001, under 37 C.F.R. §1.47(a).

The petition under 37 C.F.R. §1.47(a) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 C.F.R. §1.136(a).

The above-identified application was filed on June 20, 2001, without an executed oath or declaration. Accordingly, on July 3, 2001, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring an executed oath or declaration in compliance with §1.63, and a surcharge for its late filing. This Notice set a two-month period for reply of September 3, 2001.

In reply, applicant filed a petition, petition fee and the surcharge for late filing of the declaration. To make timely the reply, a one month extension of time was also submitted. In support of the petition, applicants submitted the affidavit of Neil Munro, chief executive officer of the assignee, a copy of the assignment document, correspondence to the joint inventors and a oath or declaration.

A grantable petition under 37 C.F.R. §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. The instant petition does not satisfy requirements (1).

As to item (1), Rule 47 applicant has failed to show that the non-signing inventor refused to sign the declaration after having been presented with the application papers.

The letter mailed to the joint inventors only indicates the declaration and assignment documents were presented to the non-signing inventor. Before a refusal can be alleged, applicant must demonstrate a bona fide attempt was made to present a copy of application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor. See MPEP 409.03(d).

Thus on renewed petition, applicant must establish the **entire** application package (including specification, claims and drawings) was presented to the non-signing inventor and he refused to sign.

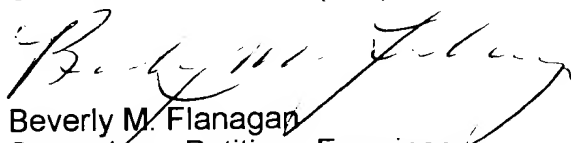
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
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Telephone inquiries related to this decision may be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.


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